

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IMCO CONSTRUCTION, INC., a
Washington Corporation,

Plaintiff,

v.

NAVIGATORS INSURANCE COMPANY,
a foreign corporation.

Defendant,

and

ZURICH AMERICAN INSURANCE
COMPANY, a foreign corporation;
BERKSHIRE HATHAWAY SPECIALTY
INSURANCE COMPANY, a foreign
corporation,

Additional Parties.

No.:

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Sections 1441 and 1446, Defendant Navigators Insurance
Company submits this Notice of Removal.

I. PROCEDURAL POSTURE

1. On January 27, 2022, Plaintiff IMCO Construction, Inc. served Navigators with a Summons and Complaint via the Washington State Office of the Insurance Commissioner (OIC)—a copy of which is attached as **Exhibit A** (the “State Court Action”). The OIC delivered Certificate of Service number 2357 to Navigators on February 2, 2022 (included within **Exhibit A**).

2. The Complaint indicates that venue for the State Court Action will be the Washington State Superior Court in and for King County. But, to Navigators’ knowledge, including a recent search of the King County docket, IMCO has not yet filed the Complaint.

3. Nevertheless, the state court acquired jurisdiction as of the date of service of the Complaint on Navigators.¹ Federal courts have held that the 30-day period for removal begins when service of process is complete and the action has therefore been “commenced.”² Under Washington law, a civil action is “commenced” when it is served.³ Notwithstanding the lack of filing in state court, then, Navigators files this Notice.⁴

¹ *Alderson v. Delta Air Lines, Inc.*, No. C18-1374JLR, 2018 WL 5240811, *2 (W.D. Wash. Oct. 22, 2018) (“Washington law provides that ‘a civil action is commenced by service of a summons together with a copy of the complaint . . . or by filing a complaint. Wash. Super. Ct. R. 3(a) . . . Washington law provides that state courts have jurisdiction over cases ‘from the time of commencement of the action by service of summons, or by filing of a complaint. . . .’ RCW 4.28.020.”)

² *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999); *Bush v. Cheaptickets, Inc.*, 425 F.3d 683, 686 (9th Cir. 2005).

³ Wash. Super. Ct. R. 3(a) (A civil action is “commenced” either by “service of a copy of a summons together with a copy of a complaint” or “by filing a complaint.”). *See also Alderson*, 2018 WL 5240811 at *2 (“service of a summons and complaint commences a civil action in state court and vests the state court with jurisdiction over the matter, thus making it removable.”); *Dustin v. Meridian Financial Serv., Inc.*, No. C17-1087-JCC, 2017 WL 3773714, *3 (W.D. Wash. Aug. 31, 2017).

⁴ *See Melvin v. Kingsolver*, No. C12-5401RJB, 2012 WL 13026632, at *3 (W.D. Wash. Jun. 12, 2012) (“According to state law [service of a summons and complaint] commenced the action and it was subject to removal.... There is nothing in the removal statute that requires a state court filing as a prerequisite to filing a notice of removal.”).

4. In addition, Navigators' removal is timely because it occurs within 30 days after service of the Complaint on Navigators, under 28 U.S.C. § 1446(b)(1).

II. GROUND FOR REMOVAL

5. Removal is proper because the State Court Action is one over which this Court has original jurisdiction based on diversity of citizenship, under 28 U.S.C. § 1332(a).

6. Complete diversity exists because the plaintiff is not a citizen of the same state as the defendant.

7. Specifically, IMCO is a Washington Corporation with its principal place of business in King County, Washington. IMCO is therefore a citizen of Washington.

8. Navigators is a New York Corporation with its principal place of business in Hartford, Connecticut. Navigators is therefore a citizen of Connecticut.

9. In addition to Navigators, IMCO also identified Zurich American Insurance Company and Berkshire Hathaway Specialty Insurance Company as so-called "additional parties," but not Defendants. Accordingly, the state of citizenship of those two entities is immaterial to whether there is diversity between IMCO and Navigators.

10. Even if the citizenship of these two additional parties did matter, upon information and belief, Zurich is a New York corporation with its principal place of business in Schaumburg, Illinois. Zurich is therefore a citizen of Illinois.

11. Similarly, upon information and belief, Berkshire Hathaway is a Nebraska corporation with its principal place of business in Omaha, Nebraska. Berkshire Hathaway is therefore a citizen of Nebraska.

12. The amount in controversy requirement is satisfied, as IMCO, itself, states in the Complaint: "The amount in controversy exceeds \$75,000 exclusive of costs and interest[.]"⁵ Moreover, a "defendant's notice of removal need include only a plausible

⁵ Plaintiff's Complaint ¶ 6.

1 allegation that the amount in controversy exceeds the jurisdictional threshold.”⁶ Navigators
 2 has a good faith basis to believe, then, that IMCO seeks damages in excess of \$75,000.

3 **III. VENUE AND ASSIGNMENT**

4 13. Venue is proper in the United States District Court for the Western District of
 5 Washington based on 28 U.S.C. § 1441(a) because it is the district and division embracing
 6 the place where the State Court Action is captioned.

7 14. Assignment is proper to the Seattle Division because the Complaint is
 8 captioned in King County and IMCO brought claims allegedly arising in King County,
 9 Washington.⁷

10 **IV. STATE COURT PLEADINGS**

11 15. Under LCR 101(b), Navigators is filing contemporaneously with this Notice
 12 copies of the Complaint and a Certificate of Service listing all parties and counsel.⁸

13 16. IMCO has not yet filed the Complaint in state court. As a result, there are
 14 currently no “records and proceedings in the state court proceeding” that can be filed in this
 15 Court, as contemplated by LCR 101(c).

16
 17 //

18
 19 //

20
 21 //

22
 23 ⁶ *Dart Cherokee Basin operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

24 ⁷ See LCR 3(e).

25 ⁸ Navigators has only yet received service via the Washington Office of the Insurance Commissioner.
 26 This service lists only Navigators, and does not list the additional parties to which Plaintiff IMCO refers in its unfiled Complaint.

1 DATED: February 28, 2022

2 BULLIVANT HOUSER BAILEY PC

3
4 By /s/ Matthew J. Sekits

5 Matthew J. Sekits, WSBA #26175

6 E-mail: matthew.sekits@bullivant.com

7 By /s/ Campbell Stuart

8 Campbell Stuart, WSBA # 58287

9 E-mail: campbell.stuart@bullivant.com

10 Attorneys for Defendant Navigators Insurance
11 Company

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF e-filing system which will send notification of such filing to the persons listed below:

Richard T. Beal, Jr.
ASHBAUGH BEAL
701 Fifth Avenue, Suite 4400
Seattle, WA 98104
rbeal@ashbaughbeal.com

<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>

via hand delivery.
via first class mail.
via email
CM/ECF E-service

Attorneys for Plaintiff

Dated: February 28, 2022.

/s/ Kristin Anderson

Kristin Anderson, Legal Assistant